

Proposed Amendment to Senate Bill 125
Version SB0125.02, As Transmitted to House
Amendment Requested by the Department of Public
Health and Human Services

For House Judiciary Committee

1. TITLE

Line 7

Strike: "EXAMINATION AND" on line 7

Line 7

Following: "TREATMENT OF CRIMINAL DEFENDANTS" on line 7

Strike: "PROVIDING RULEMAKING AUTHORITY FOR THE DEPARTMENT
OF PUBLIC HEALTH AND HUMAN SERVICES REGARDING EXAMINATIONS;"

Line 12

Strike "46-14-206"

Line 13

Following "46-14-221

Insert "AND"

Following "46-14-301"

Strike: "AND"

Strike: "53-21-127"

2. Page 4, line 24 through page 5, line 28

Strike: Section 1 in its entirety

3. Page 6, lines 10 through 14

Following "lacks fitness to proceed," on line 10

Strike: remainder of line 10 through "treated" on line 14

4. Page 6

Line 15

Following "subsection (4)"

Strike "(7)"

Insert "(8)"

5. Page 6,

Following line 24

Insert: "(3) The facility shall develop an individualized treatment plan to assist the defendant to gain fitness to proceed. The treatment plan may include a physician's or advance practice registered nurse's prescription of reasonable and appropriate medication that is consistent with accepted medical standards. If the defendant refuses to comply with the prescribed medication, the physician's or advance practice registered nurse's shall file a report with the court, the county attorney and the defendant's counsel, which must contain:

(a) a summary of the treatment plan including a description of the recommended medication;

(b) the physician's or advance practice registered nurse's opinion as to whether medication is substantially likely to render the defendant competent to stand trial and substantially unlikely to have side effects that will interfere significantly with the defendant's ability to assist counsel in conducting a defense;

(b) the physician's or advance practice registered nurse's opinion as to whether alternative, less-intrusive treatments are likely to achieve substantially the same results; and

(c) the physician's or advance practice registered nurse's opinion as to whether administering the medication is medically appropriate.

(4) Upon receiving the physician's or advance practice registered nurse's report on the refusal of the defendant to comply with prescribed medication, the county attorney may petition the court for an order authorizing the administration of medication involuntarily. The defendant has a right to a hearing on the petition. The hearing may, in the discretion of the court, be conducted by two-way electronic audio-video communication. The audio-video communication must operate so that the defendant, the defendant's counsel, and the judge can see each other simultaneously and converse with each other, and so that the defendant and the defendant's counsel can also communicate privately. The defendant may request that counsel from the mental disabilities board of visitors be present, for consulting purposes only, if the defendant is located at the state hospital."

6. Page 6, line 25 through 30

Strike line 25 in its entirety

Insert: "(5) The"

Following "court shall" on line 26

Strike: "hold a hearing prior to commitment and"

Following "determine whether" on line 26

Strike: remainder of line 26 through "involuntary medication and" on line 29

Strike: "factors" in line 30

Insert "circumstances"

Renumber: subsequent subsections

7. Page 7, line 7

Strike "elements"

Insert "circumstances"

Following: "determines that"

Insert: "all of"

Following "Subsection (4)"

Strike: "(a) or (4)(b)"

8. Page 7, line 8 - 9

Following "involuntarily" on line 8

Strike: remainder of line 8 though "53-21-127(6)" on line 9

9. Page 7

Line 24

Following "'on each"

Strike "element"

Insert "'circumstance"

10. Page 8

Line 25 through 26

Following: "include" on line 25

Strike "._" through "(a)" on line 26

11. Page 8, line 27 through Page 9, line 1

Strike: Page 8, line 27 through page 9, line 1 in their entirety

12. Page 9

Following: Line 18

Insert: "(4) If the court commits the defendant to the custody of the director, the chief medical officer of the facility in which the defendant is placed, or the chief medical officer's designee, is authorized to administer appropriate medication involuntarily. Medication may not be involuntarily administered to the defendant unless prior to the beginning of the involuntary administration a physician or advance practice registered nurse determines that medication is likely to facilitate effective treatment of the mental disease or defect that renders the defendant a danger to the defendant or others, and, considering less intrusive alternatives, is medically appropriate. A medication review committee must review the administration prior to the beginning of the involuntary administration or, if prior review is not possible, within 5 working days after the beginning of the involuntary administration. The medication review committee must include at least one person who is not an employee of the facility. The defendant and the defendant's attorney or advocate or counsel from the mental disabilities board of visitors must receive adequate written notice of the date, time, and place of the review and must be allowed to appear and give testimony and evidence. The involuntary administration of medication must be reviewed by the committee 14 days and 90 days after the beginning of the involuntary administration if medication is still being involuntarily administered.

Renumber: subsequent subsections

13. Page 10, lines 8 through 16

Strike: lines 8 through 16 in their entirety

14. Page 13, Line 6 through Page 15, line 11
Strike: Section 4 in its entirety

-End-

Explanation:

Items 1: Amends the title

Item 2: Returns to current law status. Hearing on involuntary medication for fitness will continue to take place only after the treating professional has had a chance to prescribe and only if actual refusal occurs. (Addresses concerns of Judge Larson in Senate hearing that earlier hearing would be a burden on the court process and that treating professional is better positioned to testify on this subject than the initial fitness examiner.)

Item 3: Returns to current law status. All defendants found unfit to proceed will continue to be committed for at least one cycle of treatment and assessment by the treating professional prior to being judged incapable of becoming fit to proceed within the reasonably foreseeable future. (Addresses concerns of Judge Larson in Senate hearing that treating professional is better positioned to testify on this subject than the initial fitness examiner.)

Items 4 - 7 and 9: Moves the provisions implementing the due process principles set forth in Sell v. US, 539 U.S. 166, 156 L. Ed. 2d 197, 123 S. Ct. 2174 (2003), to involuntarily medicate a defendant found unfit to proceed, for whom medication is prescribed solely for the purpose of regaining fitness to proceed, from the deleted Section 1 to Section 2, with amendments, including that the involuntary medication hearing in the sentencing court may be conducted by video conferencing from the state hospital. (Addresses concerns of Judge Larson noted above for Items 2 and 3)

Items 8, and 10 - 13: Provide that when a defendant is found Not Guilty by reason of Mental Illness (NGMI) of an offense which involved a substantial risk of serious bodily injury or death, actual bodily injury, or substantial property damage, and the court also finds the defendant's mental disease or defect currently renders the defendant a danger to the defendant or others and therefore commits the defendant for mental health treatment under 46-14-301, that medication may be involuntarily administered under the supervision of an Involuntary Medication Review Board. The

amendment eliminates reference to the civil involuntary commitment process.

Item 14: Deletes an amendment to another title of the MCA dealing with civil mental health commitment, which is not within the subject matter of this Bill and thus not compliant with Montana Const. Article V, Section 11 ("each bill shall contain only one subject...").

Prepared by:

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444-1258

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